

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
123 WILLIAM STREET
NEW YORK, NY 10038
TELEPHONE: (212) 417-5708
FAX: (212) 417-2322
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

DRAFT

Cemetery Board Minutes November 10, 2020 Via WebEx

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of the New York Attorney General
Thomas Fuller, Department of Health

OTHER ATTENDEES:

Joshua Beams, Dep't of State
John Fatato, Dep't of State
Vince Gimondo, Division of Cemeteries
Andrew Hickey, Division of Cemeteries
Kerry McGovern, Division of Cemeteries
Antonio Milillo, Dep't of State, Counsel
Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries
Brendon Stanton, Division of Cemeteries
Robert Vanderbles, Dep't of State
Alicia Young, Division of Cemeteries

GUESTS:

Brendan Boyle, NYSAC, Featherstonhaugh, Wiley & Clyne
Joseph Dispenza, Forest Lawn Group
David Fleming, NYSAC, FWC
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park
Janis Gilmore, Wading River Cemetery
Jay Ivler, Mount Lebanon Cemetery
Justin Locke, Pinelawn MP
Nate Romagnola, White Haven MP
Scott Ruth, Evergreen Cemetery

Opening Remarks

Mr. Pattison gave an overview of how the meeting would proceed via WebEx.

Mr. Milillo explained that the meeting is operating pursuant to Executive Order 202.1, which suspends the requirement to appear in person. The notice was posted in accordance with law and notice, agenda, and materials have been posted on the Division of Cemeteries website.

We take attendance; lobbyists must identify themselves and the entity they represent; speakers shall identify themselves.



**Department
of State**

20-11-A-69 Minutes of Previous Meeting

Motion was made, seconded, and unanimously adopted approving the minutes of the October 13, 2020 meeting as distributed.

20-11-B-70 Legislation and Regulations

1. Pending Legislation

Mr. Milillo reported no changes in status in pending legislation.

2. Rules and Regulations

Mr. Milillo reported that we have put together a document containing both the steps the Division will take to prevent abandonment and the process of abandonment to be shared with interested parties.

20-11-C-71 Division Report

Mr. Polishook reported that we have participated in continuing education sessions for funeral directors.

We continue to monitor cemetery and crematory data concerning COVID. We have not noted a significant uptick in burial or cremation numbers to date.

Mr. Fuller stated that several funeral directors in New York City have noticed an uptick in COVID cases but no backlog.

Ms. Faber asked whether funeral directors anticipate backlogs and delays?

Mr. Fuller responded that funeral directors are anxious but not anticipating problems because things came into place in April and May to help them better handle a surge.

Alicia Young added that the Division has received 1,299 annual reports to date, of which 29% were submitted online.

20-11-D-72 Vandalism, Abandonment and Monument Repair or Removal Fund Report

Ms. Young provided the vandalism report. So far in the 2020 calendar year the Division has collected \$458,627 in vandalism funds. Assessment collections total \$261,525. In the current fiscal year collections are \$74,275 in vandalism collections and \$44,693 in assessment collections.

\$483,067.64 remains unpaid in applications approved in prior years.

\$827,987 remains available from the current appropriation for future applications.

Four applications, one vandalism, one abandonment, and two for repair of dangerous monuments.

Town of Kendall/ Morton Union Cemetery (37-009) (Orleans County)

The Town requests funds for abandoned cemetery maintenance for funds for fencing, monument repair, equipment, and a survey. The Town also seeks reimbursement for actions the Town took before conveyance but recommend against \$36,634 for the survey, fence, monument repair, and equipment.

Mr. Milillo commented that there is a question of whether this was an involuntary abandonment or voluntary transfer of the cemetery to the municipality under N-PCL section 1506(j). Mr. Milillo recommended that the Board look at the correspondence, paper and digital, to determine which it was. Assuming it is a proper

application for abandonment funds. Mr. Milillo pointed out that the request for funds for a survey was designed to permit the Town to put up the fence, which is something for which a Town may seek funds.

Mr. Milillo raised a question as to the position of the Attorney General on non-judicial dissolutions where a cemetery is voluntarily conveyed to a Town.

Ms. Faber stated that although she cannot state the position of the agency, she can say that the process for non-judicial dissolution which involves filing a petition and a plan and obtaining OAG approval differs from the process in N-PCL § 1506(j). As to whether the Agency recommends a certain protocol, she cannot comment on that now.

Mr. Milillo added that he has viewed an abandonment as outside the voluntary dissolution process; has viewed the sale of all its real property under section 1506 as falling within the dissolution process, and has viewed the voluntary turnover to a municipality as somewhere in between.

Mr. Polishook, responding to Mr. Pattison's question as to whether this was a voluntary conveyance, stated that:

1. The town did not want to take on the cemetery;
2. The town provided maintenance in lieu of having to take responsibility for the cemetery;
3. The death of the treasurer left the cemetery without a functioning board.

Ms. Faber suggested that we request as much information as possible going forward to unpack what happened and not have to second-guess after the fact what the intent was.

Mr. Polishook clarified that we have implemented what Ms. Faber suggests for newly-received applications.

Ms. Faber stated that in this case the evidence of the town's intent was sufficient.

Motion was made, seconded, and unanimously adopted approving the application in the requested amount, subject to availability of funds.

Wading River Cemetery (52-055) (Suffolk County)

Wading River Cemetery seeks \$200 to repair a stone the cemetery reported broken in June. Kerry McGovern visited the cemetery on June 11 and concluded the stone had been broken for some time for several reasons. The break surface showed growth of lichen. Online photos of the break show that it existed several years before it was reported.

Mr. Milillo added that reports of vandalism must be received within 30 days of discovery; the application must be submitted within six months of discovery (the latter deadline can be extended). Mr. Milillo stated that given the age of the photos showing the stone damaged, the cemetery would have to have known more than 30 days before reporting it that it was damaged.

Ms. Janis Gilmore, representing Wading River Cemetery, stated that the cemetery had previously repaired the stone, but was newly vandalized. This stone is right at the edge of the road at the entrance to the cemetery so the damage would have been noticed quickly. The fixed stone is at an angle; if the fix had simply given way, the stone would have fallen in the opposite direction. The fix also left a gap where the lichen could have grown.

Ms. Gilmore also commented that the cemetery lacked contact information for the family of the lot owners and did not see a requirement to post a legal notice concerning the cemetery.

Ms. McGovern indicated that she saw no evidence of previous repair.

Mr. Polishook stated that the Division did not recommend denial of the application based on late notification to the Division or the lack of a photograph, but rather that this was at most “old” vandalism.

Mr. Milillo added that the regulations (19 NYCRR section 200.11(d)(3)(iv)) require publication where the family cannot be contacted.

Ms. Faber suggested that the Division take additional time to consider any new information.

Mr. Seelman recommended that if we have just received the police report we should review it>

Motion was made, seconded, and unanimously adopted tabling this application to allow for review of any additional information.

After the motion was tabled, Ms. Gilmore asked whether the State normally asks for additional information before recommending denial of a claim. Mr. Polishook apologized for not sharing the negative recommendation with the cemetery earlier so that it could provide additional information to support its application.

Attica Cemetery, No. 61002 (Wyoming County):

Investigator Cynthia Craig visited this cemetery and confirmed that 26 monuments in total are hazardous. The cemetery was able to obtain only one estimate for this work but provided two letters from monument dealers declining to bid. Michael Seelman gathered information about other bids for restoration of dangerous monuments ranged from \$1,042-\$1,279 per monument and this application falls within that range.

Mr. Milillo reiterated his point from last month that the Board should consider amending its regulations to address the situation where there is only one bid. Two issues to be addressed are 1. What evidence is sufficient to show it was impossible to obtain a second bid; and 2. How to calculate the reasonableness of the amount of a single bid.

Mr. Fuller asked Mr. Seelman why the contractors stated they lacked equipment to complete the job. Mr. Seelman responded that the contractors had provided no further explanation.

Ms. Faber asked Mr. Milillo whether there is a requirement or form where we ask cemeteries to provide us with the number of bids they have solicited.

Motion made, seconded, and unanimously adopted approving the application of Attica Cemetery in the amount of \$27,167.22 subject to the availability of funds.

Oakwood Cemetery, No. 15052 (Erie County)

Investigator Cynthia Craig visited this cemetery and confirmed that 31 monuments are hazardous. The cemetery received one estimate from Western New York Cemetery Services for \$36,184 (\$1,167 per monument). In this region, the range for such bids is \$1,085-\$1,297; this bid falls within the range

Motion made, seconded, and unanimously adopted approving the application of Oakwood Cemetery in the amount of \$36,264.50.

20-11-E-73 Evergreen Cemetery (33-016) – Columbarium

Evergreen Cemetery, located in Oneida County, New York seeks approval of its first columbarium, containing 72 niches. The cemetery has discussed this project with lot owners and funeral directors and found that there is demand. The total cost is \$90,628. The columbarium is adjacent to the cemetery’s newer section. 15 people have inquired about spaces.

Mr. Milillo noted that the public notice lacked the required address but the cemetery nevertheless received comments so the notice appears to have been effective.

Mr. Milillo also noted that an entity owned by a board member will sell and install the columbarium. Initially, this board member participated in the vote and there was no competing bid. The cemetery obtained a competing bid and the board member participated in discussion but did not vote. Mr. Milillo questioned whether this meets OAG standards for conflict of interest situations. Mr. Milillo also noted that the higher bid contained a lifetime warranty.

Ms. Faber asked if we have minutes of the second meeting. Mr. Seelman stated that the minutes are Exhibit C. Mr. Polishook stated that he understood that the related party board member provided information about the bid but did not participate in discussion of the issue, as the statute allows.

Scott Ruth, Superintendent of Evergreen Cemetery, spoke (he also had Bill Chrysler and Ed Davis, cemetery officers, on the phone). He stated that the conflicted board member did leave the meeting after recusing himself, he was not in the room for the vote.. Also, the columbarium itself comes with a lifetime warranty under both bids.

Ms. Faber stated that it appears the conflicted board member was there as a representative of the company to give information to the board; he did not participate in the subsequent board discussion and vote. Mr. Ruth stated that was correct.

Motion was made, seconded, and unanimously adopted approving the columbarium application in the amount of \$104,278.

Public Comment

David Fleming commended Mr. Milillo for raising the need to change the regulation concerning multiple bids. Across the state, fewer companies are available to provide bids for monument repair and companies will not bid because of the amount of work involved.

Mr. Fleming also thanked regulatory partners for being in touch with the Association as we face a potential second wave of COVID.

Mr. Fleming also raised the issue of the use of crash bags for remains scheduled for cremation. Mr. Fleming stated that the Association has reached out to the New York State Funeral Directors' Association concerning the possibility of labeling containers that contain crash bags.

Motion made, seconded, and carried to go into executive session.

Motion made, seconded and carried to exit executive session. At resumption of the public session, the chair stated that no action was taken in executive session and therefore there was nothing to report.

Motion made, seconded, and carried to adjourn the meeting.

The next Board meeting is scheduled for December 8, 2020 at 10:30 AM, via Webex.